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The

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Note from the Commissioner

Welcome to the 4th issue of the Banking Department Newsletter.

Most of the issue is dedicated to discussion of the many legislative changes made this year. There were substantial changes on the consumer credit side of the Department. But, there were also some changes that banks, credit unions and other banking organizations should note. The new legislation is just one indication of the many changes taking place in the Department.

One area of change is in staffing. Included in the budget to be voted on September 4th are fourteen new positions. Most of those positions are in the Consumer Credit Division. Ten of those positions are for examiners. So, institutions under the supervision of the Consumer Credit Division can expect regular examinations by the Department.

The 158th Annual Report of the Bank Commissioner has been submitted to the Governor and Council. Upon their vote to accept, it became a public document. Thanks to the hard work of Deputy Commissioner Fleury, there is a new, more usable format for the Annual Report. The report is available on our website www.state.nh.us/banking. All of our newsletters are also available at that site.

As always, if you have any questions about the new laws (or the old laws), rules or policies, please feel free to contact us for assistance. We are here to help you.

BANKING DIVISION NEWS

Changes in Bank and Credit Union laws

This year we generally concentrated on credit union regulation. NH RSA 394-B, Credit Unions (as amended) becomes effective on August 16, 2003. Amended areas include:

- Makes a change in member voting.
- Requires bank commissioner's approval for any lease of real estate by a credit union.
- Makes changes to dividend payments.
- Makes changes to loans to officials.
- Adds a provision for regular reserves and deletes the provision for a guaranty fund.

Other statutes amended or enacted that could have a direct impact on financial institutions are:

- RSA 391 Relative to uniform common trust funds.
- RSA 564 Relative to trustees or directors of trust companies.
- RSA 384:7 Relative to the number of required board meetings.
- RSA 382-A:3-309 Relative to enforcement of negotiable instruments.
- RSA 385 Relative to safe deposit boxes.
- RSA 384:67 Relative to the use of an institution's name.
- RSA 392:43 Relative to the voluntary dissolution of a nondepository trust company.
- RSA 383:9 Relative to joint examinations and examinations of highly rated institutions.
- RSA 383:15 Relative to the Commissioner's Reports.
- RSA 384:16-c Relative to interest on escrow accounts.
- RSA 386-A:19-a Relative to deposit insurance.
- RSA 392:5 Relative to examination of applications.

Review the changes to the statutes listed and determine how the changes affect your institution's operations. If you need clarification or have questions, please call Chief Examiner Chuck O'Connor at 271-3561.

eFile with the NH Department of Revenue

If your institution routinely files payments with the NH Department of Revenue there is a new process that allows you to do this electronically. For more information please visit their website at www.state.nh.us/revenue or call them at 271-2186 and ask for the Document Processing Division.

CONSUMER CREDIT DIVISION NEWS

Several pieces of legislation have passed this year that significantly affect persons licensed by the Consumer Credit Division of the New Hampshire Banking Department ("NHBD", "the department") who conduct business as sales finance companies and retail sellers

(RSA 361-A), mortgage brokers, bankers and servicers (RSA 397-A, 397-B and 398-A), and small loan lenders (399-A).

The legislation was intended to make the various licensing laws administered by the NHBD consistent among the statutes. Under the new laws, for instance, all licenses will be renewed by filing a form and paying a fee on or before December 1st, for the ensuing calendar year that starts in January. Gone are the various renewal dates for different licenses and the detailed renewal applications. While this may result in a short licensing period for some, it paves the way for electronic filings. We hope to allow for on-line renewal in the near future.

Certain changes apply to all licensees:

- All licensees (excluding retail sellers) must submit financial statements to the department within ninety (90) days of their fiscal year end (small loan lenders must file them within 60 days of their FYE). Financial statements are no longer required to be filed at renewal time. The annual report of New Hampshire business activities for the prior calendar year is due on or before February 1st each year. This is not a new requirement, but bears a reminder because of the tight filing time frame of 31 days from the calendar year end. Both of these filings are vital to maintain a license in this state. The financial statements reflect the licensee's financial ability, responsibility and integrity that qualify it to continue to hold a license and the annual report is necessary in order for the Banking Commissioner to make his Annual Report to the Governor and Executive Council. As in the past, fines will be assessed for late filings of those forms.
- All licensees have been put under a continuing obligation to keep all information on file with the NHBD current at all times, thereby eliminating the need for an extensive application process at renewal time. Changes to name, form of organization, name and address of resident agent (if company is not organized under New Hampshire law), ownership, principals, officers and directors, addresses, amendments to the surety bonds or U-2 forms (such as necessitated by change in name or organization), the list of originators, etc. need to be filed with the NHBD as they occur. It is the licensee's obligation to make sure that the application upon which the department based its initial decision to issue the license(s) and all documents and information on file with the department (other than periodic reports such as the financial and annual reports) remain accurate in all material respects at all times. We anticipate that electronic filing will simplify this amendment process.
- Branch office definitions and licensing requirements have been made uniform throughout the statutes to include in-state locations only. The principal office of the company will still have to be licensed wherever it is located. The branch office definition is intended

to capture all New Hampshire locations from which a licensee or agent of a licensee conducts business. The term "business location" in the definition does not necessarily mean a commercial location. If a person conducts business from their home, that location needs to be licensed as a branch.

- There is a new requirement for all licensees to file a Uniform Consent to Service of Process (Form U-2), regardless of whether or not they are organized under New Hampshire law or have a physical presence in New Hampshire. We have sent each licensee the required form.
- The surety bond requirements have changed from annual term bonds to continuous bonds. The requirement for sales finance companies and first mortgage brokers and bankers to have bonds on file with the NHBD have not changed, other than to become continuous (second mortgage home loan lenders and small loan lenders are no longer required to file \$5,000 bonds). We have sent all licensees required to file surety bonds the forms with the new language.
- The department is requesting that a new form U-2 and a new continuous surety bond be filed with the NHBD on or before October 31, 2003. The forms must be in place to allow for the simplified renewal process. This one-time process will eliminate the yearly hassle of obtaining a properly executed new bond or rider that often resulted in a delay in the renewal process and issuance of the licenses. Since licensees currently have a bond on file that expires on December 31, 2003, the new continuous bond may have an effective date of January 1, 2004. But in no case can a license be renewed until we receive the new bond form, and if a new license is not issued effective January 1, 2004, the company will have to cease business until the surety bond is filed and we are legally able to issue the license for 2004. Contact your insurance agent and provide them with the copy of the bond form we have sent; they will know how to proceed to effect this change.
- We should point out that the application and review process for an initial license or to initially add a branch has not changed. The information and forms are available on our website at www.state.nh.us/banking.
- As mentioned in the last newsletter, the focus of the NHBD has been redirected to our statutory obligation to examine each licensee every 18 months (excluding retail sellers). Accordingly, much of the information that was previously required at renewal time will be obtained, examined and confirmed when we examine the licensees' office locations. Under the new law, licensees are afforded a 30 day time period to provide a written response to the examination.
- Documents are deemed filed with the department when they are physically received by the department, not on the date the submission is postmarked. Important filing deadlines are:

Renewal application for the ensuing year	December 1 st
Annual Report to the Commissioner (prior year's business)	February 1 st
List of names and addresses of all Mortgage Originators	February 1 st
Financial Statement of the licensed person	90 days from the company's fiscal year end

First and Second Mortgage Bankers and Brokers

The following changes apply specifically to their business:

- Licensed mortgage bankers and brokers will be required annually to submit a list of the names and addresses of all individuals who originate mortgages for their company, wherever they are located. The list must be updated as changes occur to keep the records on file with the department accurate. Persons filing new applications will now need to submit the list of loan originators with the application.
- Persons who currently hold a NH first or second mortgage license will need to initially report the names and addresses of their originators when they file their annual report on or before February 1, 2004. Thereafter, licensees will have to report changes to the list as they occur in order to keep the information on file with the department current at all times. Filings may be done electronically at www.state.nh.us/banking.
- The “independent contractor” language in the law has been eliminated. For purposes of licensing, it does not matter whether you pay your originators via a W-2 or 1099. Mortgage bankers and brokers must supervise and are responsible and liable for all activities of their employees and originators, and an originator cannot work for more than one mortgage banker or broker (they would need to become licensed as a broker themselves if they originate loans for more than one banker or broker).
- The “branch office” definition states that a branch office includes any “business location” within the state. That does not mean that only commercial business locations must be licensed or that a commercial location is required. It means that a branch license is required for any location from which business of the mortgage banker or broker is conducted. Rules will soon flesh out such subtleties in the statute. Out-of-state branches are no longer required to be licensed. The principal office of each company, wherever located, will continue to have to be licensed. Licensees must supervise and are held responsible and liable for all mortgage activities of each of their branch offices.

- The requirement for a mortgage banker's or broker's license number to be displayed in all advertisements has been replaced with a requirement to make the simple non-changing disclosure “Licensed by the New Hampshire banking department” in all advertisements.
- All persons making second mortgage home loans in New Hampshire or with New Hampshire residents will need to be licensed. Gone is the exception from the licensing requirements if a person's “broker, agent or other representative” holds a second mortgage license. All persons who make or broker second mortgages have to obtain a license.
- However, while licensed first mortgage bankers and brokers who want to make or broker second mortgage home loans will need a second mortgage home lender license (for the principal location and for each branch location), the process to initially obtain and renew the license has been greatly simplified. Since the banking department will have current accurate information on file in connection with the existing first mortgage license, the filing of a form and fee will result in the automatic issuance of a license for second mortgage business.
- First mortgage brokers who want to broker second mortgage loans will file the notice and will receive a second mortgage home loan lender license limited to second mortgage brokering activities only. A first mortgage banker, or a person licensed as a banker/broker will file the notice and will receive a full second mortgage home loan lender license that allows it to either broker or make second mortgage loans.
- The requirement for second mortgage home loan lenders to file a \$5,000 surety bond for a second mortgage home lender license has been eliminated.

Sales Finance Companies

Sales Finance Companies should note that separate trade name licensing is not required. The company will be issued a license under its legal name with a “doing business as” extension, if applicable. The company is responsible to report any changes to the legal name or the trade name and obtain an amended license from the department.

Retail Sellers

- While retail sellers do not undergo examination or have to file surety bonds and annual reports, they will need to file a Form U-2 with the department (only once, unless the name or form of organization of the company changes).
- At renewal time, retail sellers will be required to submit a list of all correspondent lenders that the licensee used during the previous license year.
- Separate trade name licensing is not required. The company will be issued a license under its legal name

with a “doing business as” extension, if applicable. The company is responsible to report any changes to the legal name or the trade name and obtain an amended license from the department.

- No longer will the renewal date for retail sellers be April 30th. Retail sellers will renew their licenses in December 2003 for the calendar year of 2004, and thereafter will renew each December for the ensuing year.

Mortgage Servicers

- A great number of changes have been made to the registration statute of mortgage servicing companies. RSA 397-B now reads very much like the other statutes administered by the banking department. Anyone engaged in this business should review the new law (available at our website at www.state.nh.us/banking) and call the department with any questions.
- The renewal date for mortgage servicers is changing. Currently licensed mortgage servicers will complete the renewal process as required on or before August 31, 2003, but the renewed license period will only run from September 1, 2003 to December 31, 2003. Mortgage Servicers will be required to again renew their licenses in December 2003 for the calendar year of 2004 and will thereafter renew each December for the ensuing year.

Small Loan Lenders

- Small Loan Lenders, including payday and title loan lenders, will see new statutory provisions that apply to their business. Certain requirements and limitations have been imposed on payday and title loans. See RSA 399-A:13 and 14 for the specific terms.
- The licensing, reporting, recordkeeping and renewal processes have been updated to be in line with other types of licensees regulated by the banking department.
- The requirement to file a \$5,000 surety bond has been eliminated.
- No longer will the renewal date for small loan lenders be April 1st. Small loan lenders will be required to again renew their licenses in December 2003 for the calendar year of 2004 and will thereafter renew each December for the ensuing year.

The banking department will soon be writing rules to make the requirements of the new laws clear. Your input and suggestions regarding rules will be appreciated. We will work together with you to make sure that the regulatory requirements serve your needs, our needs, and are fair, clear and evenly applied. Links to the new legislation can be found at our website at www.state.nh.us/banking and please call with any questions or concerns.